

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

William A. Scott) Case No.: _____
528 Magnolia)
Toledo, OH 43604)

AND)

Maylean Dixon) **COMPLAINT WITH**
1407 N. Ontario St. Upper) **DEMAND FOR JURY**
Toledo, OH 43604) **TRIAL**

AND)

Alfonzo Reese) Scott A. Ciolek (0082779)
1407 N. Ontario St. Upper) Kurt J. Wicklund (0082784)
Toledo, OH 43604) CIOLEK & WICKLUND
) 520 Madison Ave.
) Suite 820
) Toledo, Ohio 43604
) Tel: (419) 491-7270
) Fax: (866) 890-0419
) scott@cw.law.pro
) kurt@cw.law.pro

Plaintiffs,)

v.)

The Toledo Edison Co.)
c/o Ct Corporation System)
1300 E. 9th St.)
Cleveland, OH 44114)

Defendant.)

)

Attorneys for Plaintiffs

* * * * *

Plaintiffs, William Scott, Maylean Dixon, and Alfonzo Reese (collectively, “Plaintiffs”) by and through their counsel, Scott A. Ciolek of Ciolek & Wicklund, hereby states for their complaint against Defendant The Toledo Edison Co. (“Edison”), as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this action pursuant to O.R.C. § 2305.01, and the common law of the State of Ohio.

2. Venue lies in this forum because Plaintiffs are residents Lucas County, Ohio, Defendant Edison conducts extensive business operations in Lucas County, Ohio, and all events giving rise to this litigation occurred in Lucas County, Ohio.

Parties

3. Plaintiff William Scott is a resident of Lucas County, Ohio.

4. Plaintiff Maylean Dixon is a resident of Lucas County, Ohio

5. Plaintiff Alfonzo Reese is a resident of Lucas County, Ohio.

6. Defendant Edison is an Ohio Corporation with its principal place of business in Akron, Ohio.

GENERAL ALLEGATIONS

7. Plaintiff restates all of the allegations contained in paragraphs 1 through 4 as if fully rewritten herein.

8. On or about February 1, 2008, Mr. Scott moved into the lower unit of a duplex residence at 1407 N. Ontario St. Toledo, Ohio.

9. Prior to moving into the Residence, Mr. Scott contacted Edison by telephone to inform them that he was the new tenant of the lower apartment of 1407 N. Ontario

and asked that the electricity remain on, due to his medical needs, until the electricity could be switched over into his name.

10. Mr. Scott is known to have terminal AIDS, has been diagnosed with cancer, and is known to have a breathing condition that requires the use of a breathing assistance machine at least 2 or 3 times a day.

11. Mr. Reese resides in the upper unit of 1407 N. Ontario and requires medical assistance due to a stroke and back surgery, during the incident he was confined to a wheelchair.

12. All necessary services at 1407 N. Ontario St. require electricity to run; the furnace and hot water heater both require electricity to run.

13. During his phone conversation, Mr. Scott informed the representative, “Heather”, that he intended to apply for assistance with his utility bills.

14. On February 7, 2008, Mr. Scott again contacted Edison and spoke with “Heather” regarding switching the utility bills into his name and asked that the electricity not be shut off while the paperwork for utility assistance was pending.

15. “Heather” assured Mr. Scott during the phone conversation that the power would not be turned off and that he had a 14-day grace period in which to pay a \$112 deposit before the electricity could be turned off.

16. On the very next day, February 8, 2008, at around 7:00 p.m., Edison turned off all electrical service to the residence at 1407 N. Ontario St.

17. On February 8, 2008, Mr. Scott again contacted Edison and spoke to “Heather”. During this conversation “Heather” informed Mr. Scott that the power had been turned off because he was a first-time customer and had not paid a \$112 deposit.

18. On February 8, 2008, Mr. Scott engaged in a three-way phone call with Edison and his landlord and was told the electricity would be restored at midnight that evening if the deposit was paid.

19. The \$112 deposit was paid on February 8, 2008, but Edison did not restore electricity to the residence at midnight as promised.

20. On February 9, 2008, the duplex was still without power and Maylean Dixon, Mr. Scott's sister and resident of the upper unit at 1407 N. Ontario, called Edison to seek to have the power restored. Ms. Dixon spoke to a representative at Edison by the name of "Chris".

21. "Chris" informed Mrs. Dixon that the power would not be restored until at least February 11 and that if Ms. Dixon or any of the other Plaintiffs had an issue with this, they should take it up with the Mayor of Toledo.

22. Ms. Dixon contacted a local news outlet, Fox Toledo 36 and the Mayor's office on February 9, 2008 seeking help in getting the electricity restored.

23. In order to try to stay warm, the Plaintiffs turned on the stove in Ms. Dixon's upper unit and huddled around the heating units for warmth.

24. The temperature during all times in question during the power outage were well below freezing, such that Plaintiffs could see their own breath while inside the residence.

25. Due to the power being turned off by Edison, Plaintiff's food spoiled in the residence.

26. Mrs. Dixon called 911 on February 9, 2008 seeking emergency help for the situation. When the police arrived, they noted the frigid conditions of the lower apartment and forcibly removed Mr. Scott and Mr. Reese from the lower unit into Ms. Dixon's upper unit.

27. On February 11, 2008 at approximately 11:00 p.m., Edison finally restored power to the residence at 1407 N. Ontario St at the insistence of the Mayor of Toledo, Mr. Carleton S. Finkbeiner.

28. At no point during Edison's stoppage of electricity to the residence at 1407 N. Ontario St. were any of the Plaintiffs in arrears on any of their utility bills.

29. ORC 4933.121 requires that providers of public utilities such as Edison not terminate those services during harsh winter months.

30. ORC 4933.122 requires that providers of public utilities such as Edison not terminate those services without giving proper notice of an intention to do so.

COUNT ONE
(Breach of Contract)

31. Plaintiffs restate all of the allegations contained in paragraphs 1 through 30 as if fully rewritten herein.

32. In paying the \$112 deposit, Plaintiffs entered into a contract with Edison to have the electricity services returned to the residence at 1407 N. Ontario St. on midnight of February 8, 2008.

33. Edison breached this contract by failing re-establish electricity services to Plaintiffs at the agreed-upon deadline.

34. As a direct and proximate result of Edison's breach, Plaintiffs have suffered injury, pain and suffering, physical limitation, as well as other damages.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00, plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT TWO
(Promissory Estoppel)

35. Plaintiffs restate all of the allegations contained in paragraphs 1 through 34 as if fully rewritten herein.

36. Edison promised that it would not turn off electrical services to Mr. Scott when he contacted them upon moving into the residence during the 14-day grace period.

37. Edison promised that it would return electrical services to Plaintiffs on February 8, 2008 if the \$112 deposit was paid.

38. Plaintiffs relied on these promises to their detriment.

39. Edison is estopped from denying that it promised to keep the electricity on at the residence as well as restoring it on February 8, 2008.

COUNT THREE
(Violation of ORC 4933.121)

40. Plaintiffs restate all of the allegations contained in paragraphs 1 through 39 as if fully rewritten herein.

41. Pursuant to ORC 4933.121, Edison was prohibited from terminating electrical services to Plaintiffs absent due notice of intent to terminate and actual 30 days arrearage in payment.

42. Plaintiffs were not in arrears in their payments to Edison.

43. Edison did not provide any notice to Plaintiffs of its intent to terminate electrical services to them prior to the shutoff.

44. As a direct and proximate result of Edison's failure to comply with ORC 4933.121, Plaintiffs have suffered serious injury, pain and suffering, physical limitation, as well as other damages.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00, plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT FOUR
(Negligence Per Se ORC 4933.121)

45. Plaintiff restates all of the allegations contained in paragraphs 1 through 44 as if fully rewritten herein.

46. A claim for negligence per se exists “[w]here a legislative enactment imposes upon any person a specific duty for the protection of others, and his neglect to perform that duty proximately results in injury to another person.” *Eisenmuth v. Moneyhon* (1954), 161 Ohio S. 367, paragraph three of the syllabus.

47. ORC 4933.121 was enacted to protect the general public from the dangers associated terminating electrical services to consumers in harsh winter months.

48. Plaintiffs are members of the class of persons that ORC 4933.121 was intended to protect.

49. Plaintiffs’ injuries are the exact type of injuries which ORC 4933.121 was enacted to avoid.

50. As a direct and proximate result of Edison’s failure to comply with ORC 4933.121 Plaintiffs have suffered serious injury, pain and suffering, physical limitation, as well as other damages.

51. Edison’s failure to comply with 4933.121 constitutes negligence per se.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00, plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT FIVE
(Violation of ORC 4933.122)

52. Plaintiffs restate all of the allegations contained in paragraphs 1 through 51 as if fully rewritten herein.

53. Pursuant to ORC 4933.122, Edison was and remains under a duty to not terminate electrical services to those known to require services to maintain necessary medical life-supporting equipment.

54. Pursuant to ORC 4933.122, Edison was and remains under a duty to not terminate electrical services without following proper statutory notice procedures.

55. Edison did terminate electrical services to Plaintiffs, who were known to require such services to maintain necessary medical life-supporting equipment.

56. Edison did terminate electrical services to Plaintiffs without following the requisite statutory notice procedures.

57. As a direct and proximate result of Edison's violation of ORC 4933.122, Plaintiffs have suffered serious personal injury, pain and suffering, physical limitation, as well as other damages.

WHEREFORE, Plaintiff demands judgment in an amount in excess of \$25,000.00, plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT SIX
(Negligence Per Se 4933.122)

58. Plaintiff restates all of the allegations contained in paragraphs 1 through 57 as if fully rewritten herein.

59. A claim for negligence per se exists “[w]here a legislative enactment imposes upon any person a specific duty for the protection of others, and his neglect to perform that duty proximately results in injury to another person.” *Eisenmuth v. Moneyhon* (1954), 161 Ohio S. 367, paragraph three of the syllabus.

60. ORC 4933.122 was enacted to protect the general public the dangers of terminating electrical services to those in need of life-supporting medical services.

61. Plaintiffs are members of the class of persons that ORC 4933.122 was intended to protect.

62. Plaintiffs’ injuries are the exact type of injuries which ORC 4933.122 was enacted to avoid.

63. As a direct and proximate result of Edison’s failure to comply with ORC 4933.122, Plaintiffs have suffered serious injury, pain and suffering, physical limitation, as well as other damages.

64. Edison’s breach of its duties under ORC 4933.122 constitutes negligence per se.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00 plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT SEVEN

(Intentional Infliction of Emotional Distress)

65. Plaintiffs restate all of the allegations contained in paragraphs 1 through 64 as if fully rewritten herein.

66. Defendant's failure to keep the electricity on or immediately restore it in light of Plaintiff's medical conditions and the pertinent provisions of the Ohio Revised Code was extreme and outrageous.

67. Defendant's actions were, at best reckless, and at worst intentional towards the Plaintiffs.

68. Defendant's actions caused Plaintiffs severe and extreme emotional disturbance.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00 plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT EIGHT
(Trespass to Chattels)

69. Plaintiffs restate all of the allegations contained in paragraphs 1 through 68 as if fully rewritten herein.

70. Defendant's actions unlawfully deprived Plaintiffs of the possession, use, and enjoyment of their personal property.

71. Defendant's actions constitute trespass to chattels.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00 plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT NINE
(Conversion of Chattels)

72. Plaintiffs restate all of the allegations contained in paragraphs 1 through 71 as if fully rewritten herein.

73. Defendant's actions permanently deprived Plaintiffs of the possession, use, and enjoyment of their personal property.

74. Defendant's actions constitute conversion of chattels.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00 plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

COUNT TEN
(False Imprisonment)

75. Plaintiffs restate all of the allegations contained in paragraphs 1 through 74 as if fully rewritten herein.

76. By turning off the electricity to Mr. Scott's residence, the Toledo police were forced to move Mr. Scott and Mr. Reese into the upper unit for warmth.

77. Edison's actions were without lawful justification.

78. Edison intentionally shut off and refused to restore Plaintiff's electricity services.

79. Plaintiffs were confined in the upper unit of 1407 N. Ontario for nearly 4 days against their will due to Edison's actions.

80. Plaintiffs were deprived of their liberty pursuant to Edison's actions.

81. Edison's actions constitute false imprisonment.

WHEREFORE, Plaintiffs demand judgment in an amount in excess of \$25,000.00 plus attorney fees, court costs and such other relief, as the Court deems just and equitable.

Respectfully submitted,

Scott A. Ciolek, Esq.
Attorney for Plaintiffs

Scott A. Ciolek, Esq.
Kurt J. Wicklund, Esq.
CIOLEK & WICKLUND
520 Madison Ave.
Suite 820
Toledo, Ohio 43604
Tel: (419) 491-7270
Fax: (866) 890-0419
scott@cw.law.pro
kurt@cw.law.pro
Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs demand a trial by jury on all claims so triable.

Scott A. Ciolek , Esq.
Attorney for Plaintiffs

PRAECIPE

TO THE CLERK:

Please serve defendant The Toledo Edison Co. with a Summons and copy of Complaint, by certified mail service as provided by Rule 4.1(1) of the Ohio Rules of Civil Procedure at the above-captioned addresses.

Scott A. Ciolek , Esq.
Attorney for Plaintiffs

CIOLEK & WICKLUND
Scott A. Ciolek, Esq.
Kurt J. Wicklund, Esq.
520 Madison Ave.
Suite 820
Toledo, Ohio 43604
Tel: (419) 491-7270
Fax: (866) 890-0419
scott@cw.law.pro
kurt@cw.law.pro